

1 Key:

2 plain text = unchanged original language of CALEA

3 ~~redline~~ ~~strikeout~~ ~~text~~ = deleted language from CALEA

4 **bold highlighted text** = new language proposed for inclusion in CALEA

5
6 **Amendments to Communications Assistance for Law Enforcement Act of 1994,**
7 **Pub. L. No. _____, _____ Stat. _____.**
8 **One Hundred Ninth Congress of the United States of America**
9 **AT THE SECOND SESSION**
10 **An Act**

11
12 To amend titles 47 and 18, United States Code, to further clarify a communications
13 carrier's duty to cooperate in the interception of communications for law enforcement
14 purposes, and for other purposes.

15
16 *Be it enacted by the Senate and House of Representatives of the United States of America in*
17 *Congress assembled.*

18
19 TITLE I--INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS

20
21 SEC. 101. SHORT TITLE.

22 This title may be cited as the '**Amendments to the** Communications Assistance for Law
23 Enforcement Act'.

24
25 SEC. 102. DEFINITIONS.

26
27 [(1) The terms defined * * *]

28
29 (2) The term '**communication** ~~call~~-identifying information' means dialing, **routing,**
30 **addressing** or signaling information that identifies the origin, direction, destination,
31 **processing, transmission,** or termination of each communication generated or received
32 by a subscriber **or other person** by means of any equipment, facility, or service of a
33 ~~tele~~communications carrier. **Such term includes source and destination Internet**
34 **protocol and other protocol addresses, the port number, packet file size, and user**
35 **authentication and logon information, including session time and duration. Except**
36 **in the case of network access service, such term includes post-cut-through digits.**

37
38 [(3) The term 'Commission' * * *]

39
40 (4) The term 'electronic messaging services' means software-based services that enable
41 the sharing of data, images, sound, writing, or other information among computing
42 devices controlled by the senders or recipients of the messages.

43
44 [(5) The term 'government' * * *]

1 (6) The term 'exempt information services' means –

2 (A) ~~means the offering of a capability for generating, acquiring, storing,~~
3 ~~transforming, processing, retrieving, utilizing, or making available~~
4 ~~information via telecommunications; and~~ a service or application that is
5 offered or accessed via equipment, facilities or services that are subject to the
6 requirements of section 103, and provides –

7
8 (B) includes=

9
10 (i) a capability for processing stored information;

11
12 (ii) ~~a service that permits a customer to retrieve stored information~~
13 ~~from, or file information for storage in, information storage facilities~~
14 ~~facilities for the storage or retrieval from storage of information;~~

15
16 (iii) electronic publishing;

17
18 (iv) a software-based application that solely enables a user to obtain
19 addressing or routing information from anyone other than the
20 provider of the software-based application, that can be used to direct
21 communications to another user of a software-based application
22 without further assistance from the provider of the software-based
23 application; or

24
25 (v) electronic messaging services; ~~but~~ and

26
27 (B) a service offered by an entity that is not otherwise a communications
28 carrier, which service is intended to allow a device owned or controlled by
29 the user to share a network access service at a distance of 300 feet or less of
30 the premises of that entity, provided that such network access service shall
31 be compliant with section 103, unless a compliant network access service is
32 not reasonably available to the entity or the service is subject to an unexpired
33 contract in existence on the effective date of this section; but

34
35 (C) does not include –

36 (i) any capability for a telecommunications carrier's internal management,
37 control, or operation of its telecommunications network; or

38 (ii) any telecommunications, or other wire or electronic
39 communication transmission, routing, addressing or switching
40 equipment, facilities or services, that are used to offer or access a
41 service or application described in subsection 6(A);

42 (iii) any service subject to a determination by the Commission under
43 subsection (8)(B)(iv).
44

1 (7) The term `telecommunications support services' means a product, software, or service
2 used by a telecommunications carrier for the internal signaling, routing, addressing or
3 switching functions of its telecommunications network.
4

5 (8) The term `telecommunications carrier'--

6 (A) means a person or entity engaged in the transmission, routing, addressing or
7 switching of wire or electronic communications via any technology or method
8 as a common carrier for hire or otherwise on a commercial basis available to
9 the public; and

10
11 (B) includes a person or entity engaged in providing any of the following --

12 (i) ~~a person or entity engaged in providing~~ commercial mobile service (as
13 defined in section 332(d) of the Communications Act of 1934 (47 U.S.C.
14 332(d)); ~~or~~

15
16 (ii) network access service;

17
18 (iii) replacement telephone service; or

19
20 (iv) any service that provides ~~a person or entity engaged in providing~~
21 wire or electronic communication transmission, routing, addressing or
22 switching ~~or transmission service~~ to the extent that the Commission
23 finds, after consultation with the Attorney General, that ~~such service is~~
24 ~~a replacement for a substantial portion of the local telephone~~
25 ~~exchange service and that~~ it is in the public interest; to deem such a
26 person or entity to be a telecommunications carrier for purposes of this
27 title; but
28

29 (C) does not include--

30 (i) persons or entities insofar as they are engaged in providing exempt
31 information services; and

32 (ii) any class or category of telecommunications carriers that the
33 Commission exempts by rule after consultation with the Attorney General.
34

35 (9) The term "network access service" means the provision on a commercial
36 basis available to the public, of wire, radio, electromagnetic, photooptical or
37 photoelectronic services that enable a customer, subscriber or other person to send or
38 receive wire or electronic communications, via any technology or method, to or from the
39 Internet or other public communications or data network, except that such term does not
40 include a replacement telephone service as defined herein.
41

42 (10) The term "replacement telephone service" means the provision on a
43 commercial basis available to the public, of transmission, routing, addressing or switching
44 services, to enable a customer, subscriber or other person, via any technology or method, to

1 send and receive any communications involving the human voice in real or near-real time,
2 including a service that resells or relies on the transmission, routing, addressing or
3 switching facilities, equipment or services of another entity, except that such term does not
4 include an application described in section 102(6)(A)(iv).
5

1 SEC. 103. ASSISTANCE CAPABILITY REQUIREMENTS.

2
3 (a) CAPABILITY REQUIREMENTS- Except as provided in subsections (b), (c), ~~and (d)~~, (e)
4 and (g) of this section and sections 108(a) and 109(b) and (d), a telecommunications carrier shall
5 ensure that its equipment, facilities, or services that provide a customer or subscriber with the
6 ability to originate, terminate, or direct communications are capable of--

7
8 (1) expeditiously isolating and enabling the government, pursuant to a court order or
9 other lawful authorization, to intercept at a point-of-presence within the United States,
10 to the exclusion of any other communications, all wire and electronic communications
11 carried by the carrier within a service area to or from equipment, facilities, or services of
12 a subscriber of such carrier concurrently with their transmission to or from the
13 subscriber's equipment, facility, or service, or at such later time as may be acceptable to
14 the government;

15
16 (2) expeditiously isolating and enabling the government, pursuant to a court order or
17 other lawful authorization, to access at a point-of-presence within the United States,
18 all communication call-identifying information that is used by the carrier in the
19 transmission, routing, addressing or switching of wire or electronic communications
20 or, if not used by the carrier, is otherwise reasonably available to the carrier --

21
22 (A) before, or during, or immediately after the communication-identifying
23 information is generated or received by any equipment, facility, or service of
24 the communications carrier ~~transmission of a wire or electronic communication~~
25 (or at such later time as may be acceptable to the government);

26 (B) in a manner that allows it to be associated with the communication to which it
27 pertains, except that, with regard to information acquired solely pursuant to the
28 authority for pen registers and trap and trace devices (as defined in section 3127
29 of title 18, United States Code), such communication call-identifying
30 information shall not include any information that may disclose the physical
31 location of the subscriber (except to the extent that the location may be
32 determined from the telephone number);

33
34 (3) delivering intercepted communications and communication call-identifying
35 information to the government, pursuant to a court order or other lawful authorization, in
36 a standard, commercially available, and reliable format such that they may be
37 transmitted by means of equipment, facilities, or services procured by the government to
38 a location other than the premises of the carrier; and

39
40 (4) facilitating authorized communications interceptions and access to communication
41 call-identifying information ~~unobtrusively and with a minimum of interference with any~~
42 ~~subscriber's telecommunications service and in a manner~~ using methods or procedures
43 that do not impair such interception or access and ~~protects~~ --
44

1 (A) operate unobtrusively and with a minimum of interference with any
2 subscriber's telecommunications service;

3 (AB) protect the privacy and security of communications and communication
4 call-identifying information not authorized to be intercepted; and

5 (BC) protect information regarding the government's interception of
6 communications and access to communication call-identifying information,

7
8 provided that, nothing in this subsection (4) shall be interpreted to prohibit a
9 carrier from facilitating the use of processing or filtering methods or procedures
10 applied by a law enforcement agency or officer, or their designee, to the full stream
11 of wire or electronic communications and other information isolated by a carrier
12 under subsection (e).

13
14 .
15
16 (b) LIMITATIONS-

17 (1) DESIGN OF FEATURES AND SYSTEMS CONFIGURATIONS- This title does not
18 authorize any law enforcement agency or officer--

19
20 (A) to require any specific design of equipment, facilities, services, features, or
21 system configurations to be adopted by any provider of a wire or electronic
22 communication service, any manufacturer of telecommunications equipment, or
23 any provider of telecommunications support services; or

24 (B) to prohibit the adoption of any equipment, facility, service, or feature by any
25 provider of a wire or electronic communication service, any manufacturer of
26 telecommunications equipment, or any provider of telecommunications support
27 services.

28
29 (2) EXEMPT INFORMATION SERVICES; PRIVATE NETWORKS AND
30 INTERCONNECTION SERVICES AND FACILITIES- The requirements of subsection
31 (a) do not apply, unless otherwise determined by the Commission pursuant to
32 subsection 102(8)(B)(iv), to--

33
34 (A) exempt information services; or

35 (B) equipment, facilities, or services that support the transport or switching of
36 communications for private networks not made available to the public on a commercial basis
37 or for the sole purpose of interconnecting tele communications carriers.

38
39 (3) ENCRYPTION- A telecommunications carrier shall not be responsible for
40 decrypting, or ensuring the government's ability to decrypt, any communication
41 encrypted by a subscriber or customer, unless the encryption was provided by the carrier
42 and the carrier possesses the information necessary to decrypt the communication.

43
44 (c) PREMISES MONITORING - EMERGENCY, OR EXIGENT AND AUTHORIZED

1 CIRCUMSTANCES- In emergency or exigent circumstances (including those described in
2 sections 2518 (7) or (11)(b) and 3125 of title 18, United States Code, and section 1805(e) and
3 1843 of title 50 of such Code), a carrier at its discretion may comply with subsection (a)(3) by
4 allowing monitoring at its premises if that is a ~~the only~~ means of accomplishing the interception
5 or access. Pursuant to lawful order or other authorization, a carrier shall comply with
6 subsection (a)(3) by allowing monitoring at its premises.
7
8

9 (d) MOBILE SERVICE ASSISTANCE REQUIREMENTS- A ~~tele~~communications carrier that
10 is a provider of commercial mobile service (as defined in section 332(d) of the Communications
11 Act of 1934) offering a feature or service that allows subscribers to redirect, hand off, or assign
12 their wire or electronic communications to another service area or another service provider or to
13 utilize facilities in another service area or of another service provider shall ensure that, when the
14 carrier that had been providing assistance for the interception of wire or electronic
15 communications or access to ~~communication~~call-identifying information pursuant to a court
16 order or lawful authorization no longer has access to the content of such communications or
17 ~~communication~~ call-identifying information within the service area in which interception has
18 been occurring as a result of the subscriber's use of such a feature or service, information is made
19 available to the government (before, during, or immediately after the transfer of such
20 communications) identifying the provider of a wire or electronic communication service that has
21 acquired access to the communications.
22
23

24 (e) NETWORK ACCESS SERVICE ASSISTANCE REQUIREMENTS - A
25 communications carrier that is engaged in any network access service shall ensure that its
26 equipment, facilities, or services that support such network access service are capable of,
27 pursuant to a court order or other lawful authorization, compliance with subsection (a),
28 provided that, by way of compliance with subsections (a)(1) and (3), such carrier shall
29 ensure that such equipment, facilities or services are capable of:
30

31 (1) expeditiously and reliably isolating, at a point-of-presence within the United
32 States, the stream of wire or electronic communications and other information,
33 transmitted by the carrier to or from the facilities, equipment or services of a
34 subscriber of such network access service, to the exclusion of all other wire and
35 electronic communications and information, concurrently with such transmission;
36

37 (2) expeditiously and reliably storing on a temporary basis, upon written request by
38 the government agency or officer seeking to effectuate the lawful interception of
39 wire or electronic communications or access to communication-identifying
40 information, for a limited time period specified by such agency or officer as
41 necessary to effectuate such interception or access, and in a standard commercially
42 available file format --

43 (a) the stream of communications and information isolated under subsection
44 (e)(1), and,

1 (b) the communication-identifying information isolated under subsection
2 (a)(2);and

3
4 (3) enabling expeditious and reliable transmission in a standard commercially
5 available format of the stream of communications and information isolated under
6 subsection (e)(1), and the communication-identifying information isolated under
7 subsection (a)(2), to a location, device, facilities or process identified in writing by
8 the government agency or officer seeking to effectuate the lawful interception of
9 wire or electronic communications or access to communication-identifying
10 information, at which the communications authorized to be intercepted and
11 communication-identifying information authorized to be acquired may be recorded
12 or decoded in accordance with such court order or lawful authorization,

13
14 provided that, if such communications carrier is also engaged in any replacement
15 telephone service or other service or activities subject to this section, it shall comply with
16 subsection (a) and other applicable requirements with respect to such service or activity.

17
18 (f) The Commission may, by rule established pursuant to section 107(b), after
19 consideration of the cost-effectiveness for federal, state and local law enforcement agencies,
20 specify one or more standard commercially available formats that shall be used by a class
21 or category of communications carriers for delivery, storage or transmission pursuant to
22 paragraphs (a)(3), (e)(2), and (e)(3) of this section. Nothing in this subsection shall limit the
23 authority of the Commission pursuant to section 109 to determine whether delivery,
24 storage or transmission in the format specified by rule is reasonably achievable with
25 respect to any equipment, facility or service installed or deployed after January 1, 1995.

26
27 (g) A point-of-presence within the United States as required by paragraphs (a)(1), (a)(2),
28 and (e)(1) of this section, shall, in the case of satellite communications, be an earth station
29 gateway. The Attorney General may agree to waive the requirement for a point-of-
30 presence of any communications carrier within the United States subject to such conditions
31 as are mutually agreed by the Attorney General and the carrier.
32

1 SEC. 104. NOTICES OF CAPACITY REQUIREMENTS.

2 (a) NOTICES OF MAXIMUM AND ACTUAL CAPACITY REQUIREMENTS-

3 (1) IN GENERAL- Not later than 1 year after the date of enactment of this title, after
4 consulting with State and local law enforcement agencies, telecommunications carriers,
5 providers of telecommunications support services, and manufacturers of
6 telecommunications equipment, and after notice and comment, the Attorney General may
7 shall publish in the Federal Register and provide to appropriate telecommunications
8 industry associations and standard-setting organizations--
9

10 (A) notice of the actual number of communication interceptions, pen registers,
11 and trap and trace devices, representing a portion of the maximum capacity set
12 forth under subparagraph (B), that the Attorney General estimates that
13 government agencies authorized to conduct electronic surveillance may conduct
14 and use simultaneously by the date that is 4 years after the date of enactment of
15 this title; and

16 (B) notice of the maximum capacity required to accommodate all of the
17 communication interceptions, pen registers, and trap and trace devices that the
18 Attorney General estimates that government agencies authorized to conduct
19 electronic surveillance may conduct and use simultaneously after the date that is 4
20 years after the date of enactment of this title.
21

22 [(2) BASIS OF NOTICES - * * *]
23

24 [(b) COMPLIANCE WITH CAPACITY NOTICES- * * *]
25
26

27 (c) NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS-

28 (1) NOTICE- The Attorney General may shall periodically publish in the Federal
29 Register, after notice and comment, notice of any necessary increases in the maximum
30 capacity requirement set forth in the notice under subsection (a)(1)(B).
31
32

33 (2) COMPLIANCE- Within 3 years after notice of increased maximum capacity
34 requirements is published under paragraph (1), or within such longer time period as the
35 Attorney General may specify, a telecommunications carrier shall, subject to subsection
36 (e), ensure that its systems are capable of expanding to the increased maximum capacity
37 set forth in the notice.
38

39 (d) CARRIER STATEMENT- Within 180 days after the publication by the Attorney General of
40 a notice of capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier
41 shall submit to the Attorney General a statement identifying any of its systems or services that do
42 not have the capacity to accommodate simultaneously the number of interceptions, pen registers,
43 and trap and trace devices set forth in the notice under such subsection.
44

1 (e) REIMBURSEMENT REQUIRED FOR COMPLIANCE- The Attorney General shall review
2 the statements submitted under subsection (d) and may, subject to the availability of
3 appropriations, agree to reimburse a telecommunications carrier for costs directly associated
4 with modifications to attain such capacity requirement that are determined to be reasonable in
5 accordance with section 109(e). Until the Attorney General agrees to reimburse such carrier for
6 such modification, such carrier shall be considered to be in compliance with the capacity notices
7 under subsection (a) or (c).

8
9 (f) MINIMUM CAPACITY - Notwithstanding any reimbursement, and unless the
10 Attorney General has made publication of an applicable notice of capacity requirements, a
11 communications carrier shall ensure that each of its switching, addressing, routing, or
12 transmission facilities are capable of accommodating simultaneously a minimum of two
13 each of interceptions, pen registers and trap and trace devices.
14
15
16
17
18
19
20

1 SEC. 105. SYSTEMS SECURITY AND INTEGRITY.
2 A telecommunications carrier shall ensure that any interception of communications or access to
3 communication call-identifying information effected within its transmission, routing,
4 addressing or switching premises can be activated only in accordance with a court order or
5 other lawful authorization and only with the affirmative intervention of an individual officer or
6 employee of the carrier acting within the United States and in accordance with regulations
7 prescribed by the Commission.
8
9

1 SEC. 106. COOPERATION OF EQUIPMENT MANUFACTURERS AND PROVIDERS
2 OF TELECOMMUNICATIONS SUPPORT SERVICES.
3

4 (a) CONSULTATION- A telecommunications carrier shall consult, as necessary, in a timely
5 fashion with manufacturers of its telecommunications transmission, routing, addressing and
6 switching equipment and its providers of telecommunications support services for the purpose of
7 ensuring that current and planned equipment, facilities, and services comply with the capability
8 requirements of section 103 and the capacity requirements identified by the Attorney General
9 under section 104.
10

11 (b) COOPERATION- Subject to sections 104(e), 108(a), and 109 (b) and (d), a manufacturer of
12 telecommunications transmission, routing, addressing or switching equipment and a provider of
13 telecommunications support services shall, on a reasonably timely basis and at a reasonable
14 charge, make available to the telecommunications carriers using its equipment, facilities, or
15 services such features or modifications as are necessary to permit such carriers to comply with
16 the capability requirements of section 103 and the capacity requirements identified by the
17 Attorney General under section 104.
18
19
20

1 SEC. 107. TECHNICAL REQUIREMENTS AND STANDARDS; EXTENSION OF
2 COMPLIANCE DATE.

3
4 (a) SAFE HARBOR-

5
6 (1) CONSULTATION- To ensure the efficient and industry-wide implementation of the
7 assistance capability requirements under section 103, the Attorney General, in
8 coordination with other Federal, State, and local law enforcement agencies, shall consult
9 with appropriate associations and standard-setting organizations of the
10 ~~tele~~communications industry, with representatives of users of ~~tele~~communications
11 equipment, facilities, and services, and with State utility commissions.

12
13 (2) COMPLIANCE UNDER ACCEPTED STANDARDS- A ~~tele~~communications carrier
14 shall be found to be in compliance with the assistance capability requirements under
15 section 103, and a manufacturer of ~~tele~~communications transmission, routing,
16 addressing or switching equipment or a provider of ~~tele~~communications support services
17 shall be found to be in compliance with section 106, if the carrier, manufacturer, or
18 support service provider is in compliance with publicly available technical requirements
19 or standards adopted by ~~an industry association or standard-setting organization, or by~~
20 ~~the Commission under subsection (b), to meet the requirements of section 103. --~~

21 (A) an industry association or standard-setting organization to meet the
22 assistance capability requirements of section 103, except that this safe harbor
23 provision shall not apply during the period after a petition is filed by the
24 Attorney General under subsection (b) to determine whether such
25 requirements or standards adopted by the industry association or standard-
26 setting organization meet the assistance capability requirements of section
27 103, until the effective date of an order entered by the Commission that --

28 (i) determines that such requirements or standards meet the
29 assistance capability requirements of section 103; or

30 (ii) modifies such standards or requirements by rule under subsection
31 (b);

32 (B) the Attorney General to meet the assistance capability requirements of
33 section 103, and approved by the Commission pursuant to subsection (b);

34 or

35 (C) the Commission pursuant to subsection (b).

36
37 (b) COMMISSION AUTHORITY- ~~If industry associations or standard-setting organizations fail~~
38 ~~to issue technical requirements or standards or if a Government agency or any other person~~
39 ~~believes that such requirements or standards are deficient, the agency or person may petition the~~
40 ~~Commission to establish, by rule, technical requirements or standards that--~~

41 ~~----- (1) meet the assistance capability requirements of section 103 by cost-effective methods;~~

42 ~~----- (2) protect the privacy and security of communications not authorized to be intercepted;~~

43 ~~----- (3) minimize the cost of such compliance on residential ratepayers;~~

1 ~~(4) serve the policy of the United States to encourage the provision of new technologies~~
2 ~~and services to the public; and~~

3 ~~(5) provide a reasonable time and conditions for compliance with and the transition to~~
4 ~~any new standard, including defining the obligations of telecommunications carriers~~
5 ~~under section 103 during any transition period.~~

6
7 (1) The Commission, on its own motion or on petition by the Attorney General, an
8 industry association, standard-setting organization, Government agency, or any
9 other person, may —

10 (A) issue a declaratory ruling regarding the applicability of the definition of
11 communications carrier to a particular entity or class of entities;

12 (B) determine whether technical requirements or standards adopted by an
13 industry association or standard-setting organization, or by the Attorney
14 General, meet the assistance-capability requirements of section 103 or are
15 deficient; or

16 (C) establish, by rule, any technical requirements, standards, guidelines or
17 any other requirements as are necessary to meet the assistance-capability
18 requirements of section 103 and, subject to meeting such assistance-
19 capability requirements, will promote the use of methods that —

20 (i) are cost-effective methods for federal, state and local law
21 enforcement agencies and communications carriers;

22 (ii) protect the privacy and security of communications not authorized
23 to be intercepted in accordance with section 103(a)(4);

24 (iii) minimize the cost of such compliance on residential ratepayers;
25 and

26 (iv) serve the policy of the United States to encourage the provision of
27 new technologies and services to the public.

28
29 (2) The Commission may, in establishing rules, technical requirements or standards
30 under subsection (b)(1), provide a reasonable time and conditions for compliance
31 with and the transition to any new standard, including defining the obligations of
32 communications carriers under section 103 during any transition period.

33
34 (3) The Commission shall, prior to making a determination under paragraph (b)(1),
35 consult with the Attorney General as to the needs of law enforcement, public safety
36 and national security.

37
38 (4) The Commission shall issue a written determination under paragraph (b)(1)
39 within 180 days after it receives a petition, provided that, if the Attorney General
40 certifies in the petition that emergency conditions require an expedited decision, the
41 Commission shall expedite such written determination. The Commission may grant
42 or deny a petition in whole or in part and shall explain its decision in writing.

1 (c) EXTENSION OF COMPLIANCE DATE FOR EQUIPMENT, FACILITIES, AND
2 SERVICES-

3
4 (1) PETITION- A telecommunications carrier proposing to install or deploy, or having
5 installed or deployed, any equipment, facility, or service prior to the effective date of
6 section 103 may petition the Commission for 1 or more extensions of the deadline for
7 complying with the assistance capability requirements under section 103, subject to the
8 limitations on length of extensions provided in subsection (3).

9
10 (2) GROUNDS FOR EXTENSION- The Commission may, after consultation with the
11 Attorney General, grant an extension under this subsection, if the Commission
12 determines that compliance with the assistance capability requirements under section 103
13 is not reasonably achievable through application of technology available within the
14 compliance period and that the carrier has shown through particular facts that it will
15 become compliant with such capability requirements within the extension period
16 requested.

17 (3) LENGTH OF EXTENSION- An extension under this subsection shall extend for no
18 longer than the earlier of--

19
20 (A) the date determined by the Commission as necessary for the carrier to comply
21 with the assistance capability requirements under section 103; or

22 (B) ~~the date that is 2 years after the date on which the extension is granted~~ the
23 date that is 1 year after [the day before the bill is introduced].

24
25 (4) APPLICABILITY OF EXTENSION- An extension under this subsection shall apply
26 to only that part of the carrier's business on which the new equipment, facility, or service
27 is used.
28
29
30
31

1 SEC. 108. ENFORCEMENT ORDERS.

2
3 (a) ~~GROUND~~S FOR ~~ISSUANCE~~ DEFENSE - A communications carrier may be found in
4 compliance with the requirements of this court shall issue an order enforcing this title, in any
5 proceeding under section 2522(a) of title 18, United States Code, ~~only~~ if the court finds that the
6 communications carrier has demonstrated that ==

7 ~~(1) alternative technologies or capabilities or the facilities of another carrier are not~~
8 reasonably available to the law enforcement agency or officer seeking enforcement for
9 the expeditious implementation ~~ing~~ of the interception of communications or access to
10 call communication-identifying information; ~~and~~

11 ~~(2) compliance with the requirements of this title is reasonably achievable through the~~
12 application of available technology to the equipment, facility, or service at issue or would
13 have been reasonably achievable if timely action had been taken.

14
15 (b) TIME FOR COMPLIANCE- Upon issuing an order enforcing this title, the court shall
16 specify a reasonable time and conditions for complying with its order, considering the good faith
17 efforts to comply in a timely manner, any effect on the carrier's, manufacturer's, or service
18 provider's ability to continue to do business, the degree of culpability or delay in undertaking
19 efforts to comply, any exigent need by the government for prompt compliance, and such
20 other matters as justice may require.

21
22 (c) LIMITATIONS- An order enforcing this title may not--

23 (1) require a telecommunications carrier to meet the Government's demand for
24 interception of communications and acquisition of communication call-identifying
25 information to any extent in excess of the minimum capacity, except for which the
26 Attorney General has agreed to reimburse such carrier;

27 (2) require any telecommunications carrier to comply with assistance capability
28 requirement of section 103 if the carrier is deemed to be in compliance under
29 Commission has determined (pursuant to section 109(b)(1)) that compliance is not
30 reasonably achievable, unless the Attorney General has agreed (pursuant to section
31 109(b)(2)) to pay the costs described in section 109(b)(23)(A-B); or

32 (3) require a telecommunications carrier to modify, for the purpose of complying with
33 the assistance capability requirements of section 103, any equipment, facility, or service
34 deployed on or before January 1, 1995, unless--

35
36 (A) the Attorney General has agreed to pay the telecommunications carrier for all
37 reasonable costs directly associated with modifications necessary to bring the
38 equipment, facility, or service into compliance with those requirements;

39 (B) the equipment, facility, or service has been replaced or significantly upgraded
40 or otherwise undergoes major modification; or

41 (C) the effective date of the court's order is after January 1, 2008.
42

1 SEC. 109. PAYMENT OF COSTS OF TELECOMMUNICATIONS CARRIERS TO
2 COMPLY WITH CAPABILITY REQUIREMENTS.

3 (a) EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED ON OR BEFORE JANUARY
4 1, 1995- The Attorney General may, subject to the availability of appropriations, agree to pay
5 telecommunications carriers for all reasonable costs directly associated with the modifications
6 performed by carriers in connection with equipment, facilities, and services installed or deployed
7 on or before January 1, 1995, to establish the capabilities necessary to comply with section 103.

8
9 (b) EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED AFTER JANUARY 1, 1995-

10
11 (1) Except as provided in subsection (b)(2) below, a communications carrier shall
12 pay all costs directly associated with the modifications performed by carriers in connection
13 with equipment, facilities, and services installed or deployed after January 1, 1995, to
14 establish the capabilities necessary to comply with section 103.

15
16 (+2) DETERMINATIONS OF REASONABLY ACHIEVABLE- The Commission, on
17 petition conforming to the requirements stated herein from a telecommunications
18 carrier or any other interested person, and after notice to the Attorney General, shall
19 determine whether compliance with the assistance capability requirements of section 103
20 is reasonably achievable with respect to any equipment, facility, or service installed or
21 deployed after January 1, 1995. The Commission shall make such its determination on
22 each petition within ~~1 year~~ 180 days after the date such petition is filed. A petition filed
23 by a communications carrier shall include a detailed description and supporting
24 documentation setting forth the technical modifications and related costs necessary
25 to achieving compliance with respect to each of its services and each of the separate
26 applicable assistance capability requirements of section 103. The communications
27 carriers shall bear the burden of proof as to each and every fact alleged in support
28 of the petition. ~~In making such determination the~~ The Commission shall determine
29 whether compliance would impose significant difficulty or expense on the carrier and
30 make separate determinations with respect to each of the carrier's services and for
31 each assistance capability requirement. ~~or on the users of the carriers systems and~~
32 Where the Commission determines that compliance would impose such expense, the
33 Commission shall consider the following factors in determining whether to grant the
34 petition:

- 35
36 (A) The effect on public safety and national security.
37 (B) The effect on rates for basic residential telephone service.
38 (C) The need to protect the privacy and security of communications not
39 authorized to be intercepted.
40 (D) The need to achieve the capability assistance requirements of section 103 by
41 cost-effective methods.
42 (E) The effect on the nature and cost of the equipment, facility, or service at issue.
43 (F) The effect on the operation of the equipment, facility, or service at issue.

- 1 (G) The policy of the United States to encourage the provision of new
- 2 technologies and services to the public.
- 3 (H) The financial resources of the ~~tele~~communications carrier.
- 4 (I) The effect on competition in the provision of ~~tele~~communications services.
- 5 (J) The extent to which the design and development of the equipment, facility, or
- 6 service was initiated before January 1, 1995.
- 7 (K) Such other factors as the Commission determines are appropriate.

8
9 (23) COMPENSATION- If after reviewing a petition filed pursuant to section
10 109(b)(2), the Commission determines that compliance with the assistance capability
11 requirements of section 103 is not reasonably achievable with respect to equipment,
12 facilities, or services deployed after January 1, 1995--

- 14 (A) the Attorney General, on application of a ~~tele~~communications carrier, may
- 15 agree, subject to the availability of appropriations, to pay the ~~tele~~communications
- 16 carrier for the additional reasonable costs of making compliance with such
- 17 assistance capability requirements reasonably achievable; and
- 18 (B) if the Attorney General does not agree to pay such costs, the
- 19 ~~tele~~communications carrier shall be deemed to be in compliance with such
- 20 capability requirements for a period set by the Commission but not to exceed
- 21 two years following the Commission's determination of the petition filed
- 22 under subsection (b)(2); provided that the Attorney General may petition at
- 23 any time for reconsideration of the Commission's determination, and the
- 24 Commission shall make its determination on such petition within 90 days
- 25 after the date such petition is filed.

26
27 (c) ALLOCATION OF FUNDS FOR PAYMENT- The Attorney General shall allocate funds
28 appropriated to carry out this title in accordance with law enforcement priorities determined by
29 the Attorney General.

30
31 (d) FAILURE TO MAKE PAYMENT WITH RESPECT TO EQUIPMENT, FACILITIES, AND
32 SERVICES DEPLOYED ON OR BEFORE JANUARY 1, 1995- If a carrier has requested
33 payment in accordance with procedures promulgated pursuant to subsection (e), and the
34 Attorney General has not agreed to pay the ~~tele~~communications carrier for all reasonable costs
35 directly associated with modifications necessary to bring any equipment, facility, or service
36 deployed on or before January 1, 1995, into compliance with the assistance capability
37 requirements of section 103, such equipment, facility, or service shall be considered to be in
38 compliance with the assistance capability requirements of section 103 until the earlier of the
39 date on which the equipment, facility, or service is replaced or significantly upgraded or
40 otherwise undergoes major modification, January 1, 2008.

41
42 (e) COST CONTROL REGULATIONS-

43 (1) IN GENERAL- The Attorney General shall, after notice and comment, establish
44 regulations necessary to effectuate timely and cost-efficient payment to

1 telecommunications carriers under this title, under chapters 119 and 121 of title 18,
2 United States Code, and under the Foreign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1801 et seq.).
4

5 (2) CONTENTS OF REGULATIONS- The Attorney General, after consultation with the
6 Commission, shall prescribe regulations for purposes of determining reasonable costs
7 under this title. Such regulations shall seek to minimize the cost to the Federal
8 Government and shall--
9

10 (A) permit recovery from the Federal Government of--
11

12 (i) the direct costs of developing the modifications described in subsection
13 (a), of providing the capabilities requested under subsection (b)(23), or of
14 providing the capacities requested under section 104(e), but only to the
15 extent that such costs have not been recovered from any other
16 governmental or non-governmental entity;

17 (ii) the costs of training personnel in the use of such capabilities or
18 capacities; and

19 (iii) the direct costs of deploying or installing such capabilities or
20 capacities;

21 (B) in the case of any modification that may be used for any purpose other than
22 lawfully authorized electronic surveillance by a law enforcement agency of a
23 government, permit recovery of only the incremental cost of making the
24 modification suitable for such law enforcement purposes; and

25 (C) maintain the confidentiality of trade secrets.
26

27 (3) SUBMISSION OF CLAIMS- Such regulations shall require any telecommunications
28 carrier that the Attorney General has agreed to pay for modifications pursuant to this
29 section and that has installed or deployed such modification to submit to the Attorney
30 General a claim for payment that contains or is accompanied by such information as the
31 Attorney General may require.
32

33 (f) LIMITATION ON RECOVERY OF COSTS - A communications carrier shall not
34 include in any charges to any government agency or officer pursuant to 18 U.S.C. §§
35 3124(c), 2518(4), 2706 or 50 U.S.C. §§ 1805(c)(2)(D), 1842(d)(B)(iii), the costs
36 directly associated with --
37

38 (i) modifications necessary to bring any equipment, facility, or service into
39 compliance with the assistance capability requirements of section 103;

40 (ii) compliance with any rules or regulations adopted by the Commission to
41 implement the provisions of section 103 of this Act; and
42
43

1 (iii) compliance with any rules or regulations adopted by the Commission to
2 implement the provisions of section 105 of this Act, unless specifically authorized by
3 the Commission.
4

5 [Sections 110, 111 of CALEA not reprinted herein]
6

7 SEC. 112. REPORTS.

8 (a) REPORTS BY THE ATTORNEY GENERAL-

9 (1) IN GENERAL- On or before November 30, 1995, and on or before November 30 of
10 each year thereafter, the Attorney General shall submit to Congress and make available to
11 the public a report on the amounts paid during the preceding fiscal year to
12 telecommunications carriers under sections 104(e) and 109.

13 (2) CONTENTS- A report under paragraph (1) shall include--

14 (A) a detailed accounting of the amounts paid to each carrier and the equipment,
15 facility, or service for which the amounts were paid; and

16 (B) projections of the amounts expected to be paid in the current fiscal year, the
17 carriers to which payment is expected to be made, and the equipment, facilities, or
18 services for which payment is expected to be made.
19

20 (b) REPORTS BY THE COMPTROLLER GENERAL-

21 (1) PAYMENTS FOR MODIFICATIONS- On or before April 1, 1996, and every 2 years
22 thereafter, the Comptroller General of the United States, after consultation with the
23 Attorney General and the telecommunications industry, shall submit to the Congress a
24 report--

25 (A) describing the type of equipment, facilities, and services that have been
26 brought into compliance under this title; and

27 (B) reflecting its analysis of the reasonableness and cost-effectiveness of the
28 payments made by the Attorney General to telecommunications carriers for
29 modifications necessary to ensure compliance with this title.
30

31 (2) COMPLIANCE COST ESTIMATES- A report under paragraph (1) shall include the
32 findings and conclusions of the Comptroller General on the costs to be incurred by
33 telecommunications carriers to comply with the assistance capability requirements of
34 section 103 after the effective date of such section 103, including projections of the
35 amounts expected to be incurred and a description of the equipment, facilities, or services
36 for which they are expected to be incurred.
37
38
39

1 AMENDMENTS TO TITLE 18, UNITED STATES CODE

2
3 Amendments to 18 U.S.C. § 2522 --

4
5 SEC. 2522. ENFORCEMENT OF THE COMMUNICATIONS ASSISTANCE FOR LAW
6 ENFORCEMENT ACT

7 (a) ENFORCEMENT BY COURT ISSUING SURVEILLANCE ORDER- If a court
8 authorizing an interception under this chapter, a State statute, or the Foreign Intelligence
9 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or authorizing use of a pen register or a
10 trap and trace device under chapter 206, the Foreign Intelligence Surveillance Act of
11 1978 (50 U.S.C. 1841 et seq.), or a State statute finds that a telecommunications carrier
12 has failed to comply with the requirements of the Communications Assistance for Law
13 Enforcement Act as amended, the court may, in accordance with section 108 of such
14 Act, and in addition to any information, facilities and technical assistance directed
15 by the Court under the authority provided in sections 2518(4) or 3124(a) or (b) of
16 this title, direct that the carrier comply forthwith and may direct that a provider of
17 support services to the carrier or the manufacturer of the carrier's transmission, routing,
18 addressing or switching equipment furnish forthwith modifications necessary for the
19 carrier to comply.

20
21 (b) ENFORCEMENT UPON APPLICATION BY ATTORNEY GENERAL- The
22 Attorney General may, in a civil action in the appropriate United States district court,
23 obtain an order, in accordance with section 108 of the Communications Assistance for
24 Law Enforcement Act as amended, directing that a telecommunications carrier, a
25 manufacturer of telecommunications transmission, routing, addressing or switching
26 equipment, or a provider of telecommunications support services comply with such Act.

27
28 (c) CIVIL PENALTY-

29 (1) IN GENERAL- A court issuing an order under this section against a
30 telecommunications carrier, a manufacturer of telecommunications transmission,
31 routing, addressing or switching equipment, or a provider of
32 telecommunications support services may impose a civil penalty of up to \$10,000
33 per day for each day in violation after the issuance of the order or after such
34 future date as the court may specify.

35 (2) CONSIDERATIONS- In determining whether to impose a civil penalty and in
36 determining its amount, the court shall take into account--

- 37
38 (A) the nature, circumstances, and extent of the violation;
39 (B) the violator's ability to pay, the violator's good faith efforts to comply
40 in a timely manner, any effect on the violator's ability to continue to do
41 business, the degree of culpability, and the length of any delay in
42 undertaking efforts to comply; and
43 (C) such other matters as justice may require.
44

1 (d) DEFINITIONS- As used in this section, the terms defined in section 102 of the
2 Communications Assistance for Law Enforcement Act **as amended** have the meanings
3 provided, respectively, in such section.
4

5 Amendment to 18 U.S.C. § 2518(4)--
6

7 Adding the following to the second-to-last sentence: ". . . Any provider of wire or
8 electronic communication service, landlord, custodian, or other person furnishing such
9 facilities or technical assistance shall be compensated therefor by the applicant for
10 reasonable expense incurred in providing such facilities or assistance, **upon the**
11 **presentation of evidence of such expenses in an itemized form and consistent with**
12 **standard billing practices.**
13

14 Further Amendment to 18 U.S.C. § 2518(4) --
15

16 Adding the following to the last sentence: "**Pursuant to section 2522 of this chapter,**
17 **and in addition to any information, facilities and technical assistance directed by the**
18 **court pursuant to this subsection,** an order may also be issued to enforce the assistance
19 capability and capacity requirements under the Communications Assistance for Law
20 Enforcement Act **as amended.**"
21

22 Amendment to 18 U.S.C. § 3124(c) --
23

24 (c) Compensation - A provider of a wire or electronic communication service, landlord,
25 custodian, or other person who furnishes facilities or technical assistance pursuant to this
26 section shall be reasonably compensated for such reasonable expenses incurred in
27 providing such facilities or assistance, **upon the presentation of evidence of such**
28 **expenses in an itemized form and consistent with standard billing practices.**
29

30 Amendments to 18 U.S.C. § 3124(f) --
31

32 (f) COMMUNICATIONS ASSISTANCE ENFORCEMENT ORDERS- Pursuant to
33 section 2522, **and in addition to any information, facilities and technical assistance**
34 **directed by the court pursuant to this subsection,** an order may **also** be issued to
35 enforce the assistance capability and capacity requirements under the Communications
36 Assistance for Law Enforcement Act **as amended.**!
37

38 **[X.1] Amendment to be incorporated into 18 U.S.C. §§ 2511(2)(a)(ii), 3124(d), or to**
39 **CALEA --**
40

41 **Anti-Liability Provision**
42

43 **Except as otherwise provided in section 108 of this Act and section 2252 of title 18,**
44 **no cause of action shall lie in any court against any communications carrier,**

1 manufacturer of its communications transmission, routing, addressing and
2 switching equipment, or provider of communications support services, their
3 officers, employees, or agents for providing any information, facilities or assistance
4 or making any modifications to equipment, facilities or services, or ensuring any
5 capability in accordance with this Act.

1 AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934

2
3 Amendment to 47 U.S.C. § 229 --

4
5 SEC. 229. COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT
6 COMPLIANCE.

7 (a) IN GENERAL- The Commission shall prescribe such rules as are necessary to
8 implement the requirements of the Communications Assistance for Law
9 Enforcement Act **as amended**.

10
11 (b) SYSTEMS SECURITY AND INTEGRITY- The rules prescribed pursuant to
12 subsection (a) shall include rules to implement section 105 of the
13 Communications Assistance for Law Enforcement Act **as amended** that require
14 **communications** ~~common~~ carriers, **as defined in such Act** ---

15 (1) to establish appropriate policies and procedures for the supervision
16 and control of its officers and employees--

17
18 (A) to require appropriate authorization to activate interception of
19 communications or access to **communication** ~~call~~-identifying
20 information;

21 (B) to prevent any such interception or access without such
22 authorization;

23 (C) to require that one or more officers or employees are
24 available within the United States, seven days a week, 24 hours
25 a day, to assist a law enforcement agency with any such
26 interception or access;

27 (D) to require that carriers provide to a law
28 enforcement agency or officer upon request, the names and
29 appropriate identifying information of officers,
30 employees or persons otherwise under the carrier's control
31 who have access to any information about the government's
32 interception of communications or access to communication-
33 identifying information; and

34 (E) to require that all officers, employees or persons otherwise
35 under the carrier's control who have access to any information
36 regarding the government's interception of communications or
37 acquisition of communication-identifying information shall be
38 located in the United States;

39
40 (2) to maintain secure and accurate records of any interception or access
41 with or without such authorization; and

42 (3) to submit to the Commission the policies and procedures adopted to
43 comply with the requirements established under paragraphs (1) and (2).
44

1 (c) COMMISSION REVIEW OF COMPLIANCE- The Commission shall review
2 the policies and procedures submitted under subsection (b)(3) and shall order a
3 **communications** carrier to modify any such policy or procedure that the
4 Commission determines does not comply with Commission regulations. ~~The
5 Commission shall conduct such investigations as may be necessary to insure
6 compliance by common carriers with the requirements of the regulations
7 prescribed under this section.~~

8
9 (d) COMMISSION INVESTIGATIONS OF COMPLIANCE- The
10 Commission shall conduct such investigations and impose such penalties as
11 may be necessary to ensure compliance by **communications carriers** with the
12 requirements of the Communications Assistance for Law Enforcement Act as
13 amended and any regulations prescribed thereunder.

14
15 (de) PENALTIES- For purposes of this Act, a violation by an officer or employee
16 of any policy or procedure adopted by a **communications common** carrier
17 pursuant to subsection (b), or of a rule prescribed by the Commission pursuant to
18 subsection (a), shall be considered to be a violation by the carrier of a rule
19 prescribed by the Commission pursuant to this Act.

20
21 (ef) COST RECOVERY FOR COMMUNICATIONS ASSISTANCE FOR LAW
22 ENFORCEMENT ACT COMPLIANCE-

23 (1) PETITIONS AUTHORIZED- A common carrier may petition the
24 Commission to adjust charges, practices, classifications, and regulations to
25 recover costs expended for making modifications to equipment, facilities,
26 or services pursuant to the requirements of section 103 of the
27 Communications Assistance for Law Enforcement Act.

28 (2) COMMISSION AUTHORITY- The Commission may grant, with or
29 without modification, a petition under paragraph (1) if the Commission
30 determines that such costs are reasonable and that permitting recovery is
31 consistent with the public interest. The Commission may, consistent with
32 maintaining just and reasonable charges, practices, classifications, and
33 regulations in connection with the provision of interstate or foreign
34 communication by wire or radio by a common carrier, allow carriers to
35 adjust such charges, practices, classifications, and regulations in order to
36 carry out the purposes of this Act.

37 (3) JOINT BOARD- The Commission shall convene a Federal-State joint
38 board to recommend appropriate changes to part 36 of the Commission's

1 rules with respect to recovery of costs pursuant to charges, practices,
2 classifications, and regulations under the jurisdiction of the Commission.'

3
4 (g) DETERMINATIONS OF PUBLIC INTEREST -

5
6 The Commission, in any determination or proceeding regarding a
7 communications carrier as such term is defined by the Communications
8 Assistance for Law Enforcement Act as amended, which determination
9 requires consideration of the public interest, shall inquire of the carrier as to
10 the status of its compliance with such Act and shall consider any non-
11 compliance by such carrier with any provision of such Act to be a factor
12 weighing against a determination that the relief sought by the carrier is in
13 the public interest.
14
15